

a building leased primarily for commercial rather than residential purposes (SBA will determine this based upon a comparative square footage basis).

**§ 123.404 When is your business ineligible to apply for a pre-disaster mitigation loan?**

Your business is ineligible to apply for a pre-disaster mitigation loan if your business (including its affiliates) satisfies any of the following conditions:

(a) Any of your business' principal owners is presently incarcerated, or on probation or parole following conviction of a serious criminal offense, or has been indicted for a felony or a crime of moral turpitude;

(b) Your business' only interest in the business property is in the form of a security interest, mortgage, or deed of trust;

(c) The building, which is the subject of the mitigation measure, was newly constructed or substantially improved on or after February 9, 1989, and (without significant business justification) is located seaward of mean high tide or entirely in or over water;

(d) Your business is an agricultural enterprise. Agricultural enterprise means a business primarily engaged (see § 121.107 of this chapter) in the production of food and fiber, ranching and raising of livestock, aquaculture and all other farming and agriculture-related industries. Sometimes a business is engaged in both agricultural and non-agricultural business activities. If the primary business activity of your business is not an agricultural enterprise, it may apply for a pre-disaster mitigation loan, but loan proceeds may not be used, directly or indirectly, for the benefit of the agricultural activities;

(e) Your business is engaged in any illegal activity;

(f) Your business is a government owned entity (except for a business owned or controlled by a Native American tribe);

(g) Your business presents live performances of a prurient sexual nature or derives directly or indirectly more than *de minimis* gross revenue through the sale of products or services, or the

presentation of any depictions or displays, of a prurient sexual nature;

(h) Your business engages in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for commercial rental);

(i) Your business is a non-profit or charitable concern;

(j) Your business is a consumer or marketing cooperative;

(k) Your business derives more than one-third of its gross annual revenue from legal gambling activities;

(l) Your business is a loan packager that earns more than one-third of its gross annual revenue from packaging SBA loans;

(m) Your business principally engages in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(n) Your business is primarily engaged in political or lobbying activities.

**§ 123.405 How much can your business borrow with a pre-disaster mitigation loan?**

Your business, together with its affiliates, may borrow up to \$50,000 each fiscal year. This loan amount may be used to fund only those projects that were a part of your business' approved loan request. SBA will consider mitigation measures costing more than \$50,000 per year if your business can identify, as a part of its Pre-Disaster Mitigation Small Business Loan Application, sources that will fund the cost above \$50,000.

**§ 123.406 What is the interest rate on a pre-disaster mitigation loan?**

The interest rate on a pre-disaster mitigation loan will be fixed at 4 percent per annum or less. The exact interest rate will be stated in the FEDERAL REGISTER notice announcing each filing period (see § 123.407).

**§ 123.407 When does your business apply for a pre-disaster mitigation loan and where does your business get an application?**

SBA will publish a notice in the FEDERAL REGISTER announcing the availability of pre-disaster mitigation loans. The notice will designate a 30-

day application filing period with a specific opening date and filing deadline, as well as the locations for obtaining and filing loan applications. In addition to the FEDERAL REGISTER, SBA will coordinate with FEMA, and will issue press releases to the local media to inform potential loan applicants where to obtain loan applications. SBA will not accept any applications postmarked after the filing deadline; however, SBA may announce additional application periods each year depending on the availability of program funds.

**§ 123.408 How does your business apply for a pre-disaster mitigation loan?**

To apply for a pre-disaster mitigation loan your business must submit a complete Pre-Disaster Mitigation Small Business Loan Application (application) within the announced filing period. Complete applications mailed to SBA and postmarked within the announced filing period will be accepted. The complete application serves as your business' loan request. A complete application supplies all of the filing requirements specified on the application form including a written statement from the local or State coordinator confirming:

(a) The business that is the subject of the mitigation measure is located within the participating pre-disaster mitigation community; and

(b) The mitigation measure is in accordance with the specific priorities and goals of the local participating pre-disaster mitigation community in which the business is located. (The local or State coordinator's written statement does not constitute an endorsement or technical approval of the project and is not a guarantee that the project will prevent damage in future disasters).

**§ 123.409 Which pre-disaster mitigation loan requests will SBA consider for funding?**

(a) SBA will consider a loan request for funding if, after reviewing a complete application, SBA determines that it meets the following selection criteria:

(1) Your business satisfies the requirements of §§ 123.401, 123.402 and 123.403;

(2) None of the conditions specified in § 123.404 apply to your business, its affiliates, or principal owners;

(3) Your business has submitted a reasonable cost estimate for the proposed mitigation measure and has chosen to undertake a mitigation measure that is likely to accomplish the desired mitigation result (SBA's determination of this point is not a guaranty that the project will prevent damage in future disasters);

(4) Your business is creditworthy; and

(5) There is a reasonable assurance of loan repayment in accordance with the terms of a loan agreement.

(b) SBA will notify you in writing if your loan request does not meet the criteria in this section.

**§ 123.410 Which loan requests will SBA fund?**

SBA will date stamp each application (loan request) as it is received. SBA will fund loan requests which meet the selection criteria specified in § 123.409 on a first come, first served basis using this date stamp, until it has allocated all available program funds. Multiple applications received on the same day will be ranked by a computer based random selection system to determine their funding order. SBA will notify you in writing of its funding decision.

**§ 123.411 What if SBA determines that your business loan request meets the selection criteria of § 123.409 but SBA is unable to fund it because SBA has already allocated all program funds?**

If SBA determines that your business' loan request meets the selection criteria of § 123.409 but we are unable to fund it because we have already allocated all available program funds, your request will be given priority status, based on the original acceptance date, once more program funds become available. However, if more than 6 months pass since SBA determined to fund your request, SBA may request updated or additional financial information.